



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
290 BROADWAY, 17th Floor
NEW YORK, NEW YORK 10007-1866

September 28, 2022

VIA ELECTRONIC MAIL

Elissa Stein Cushman, Esq.
General Counsel and Deputy Commissioner
New York City Department of Environmental Protection
ecushman@dep.nyc.gov

Re: Gowanus Canal Superfund Site, Brooklyn, New York

Dear Ms. Cushman:

I am writing to follow up on several of our recent conversations about the implementation of the combined sewer overflow (CSO) controls to be implemented as part of the selected remedy for the Gowanus Canal Superfund Site, and in addition, to provide the attached response to legal arguments made by the City in its July 14, 2021 letter concerning EPA's Administrative Order for Remedial Action, Removal Action, and Remedial Design, Index No. CERCLA-02-2021-2010 (the "Order").

EPA appreciates the attention and priority that you and the Commissioner and your colleagues are giving at this time to the implementation of the CSO controls. We have had several constructive conversations in recent months and are making progress in working through several of the issues.

There are still some issues EPA and DEP need to resolve in the near term. One of these relates to the schedule for CP-1 and CP-2 regarding the OH-007 CSO tank. EPA indicated in its September 1, 2022 letter that EPA will not approve a delay in the schedule for CP-1 for OH-007 if that would, in turn, delay the start of CP-2. While DEP stated during our September 6th call that it is taking certain steps to reduce delays relating to OH-007 (such as looking for ways that CP-1 and CP-2 can overlap), it appears that DEP is still seeking a six-month delay of the deadline for completion of CP-1. We request that DEP respond in writing to EPA's September 1st letter, explaining how the City will ensure that CP-2 starts on time.

Another outstanding issue relates to the sampling of stormwater outfalls pursuant to the Order. EPA and DEP had a productive conversation about such sampling on September 20th. We will communicate further with DEP about that issue shortly.

EPA intends to keep working with the City to move this critical project forward. Close and regular communication between the project teams of EPA and DEP will be important to the success of the project.

As EPA has indicated previously, the Agency also intends to engage with the City regarding the resolution of its liability for noncompliance with EPA's orders regarding the Site.

The attachment to this letter responds to legal arguments made by the City in its July 14, 2021 letter. While it is possible that some of the arguments the City made in that letter may no longer represent the City's position, I believe it is important that EPA respond for the record. Further written exchanges about all of the details discussed in the attached would likely not be a useful exercise at this time; it would be better for EPA and DEP to focus on continuing our productive discussions. Nevertheless, if you would like to discuss any of the issues covered in the attached, please contact me at 212-637-3152 or simon.paul@epa.gov. Thank you.

Sincerely,

Paul Simon
Acting Regional Counsel

Enclosure

Cc: Robert D. Fox, Esq.